

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 1158 OF 2013

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure.

(Against Decree)

-And-

IN THE MATTER OF:

Md. Shahabuddin died leaving behind his
legal heirs: 1(1)-1(5) and others

--- Defendant-Respondent-Petitioners.

-Versus-

Md. Osman Gani

---Plaintiff-Appellant-Opposite Party.

No one appears

---For the Defendant-Respondent-Petitioners.

Mr. Md. Mokshed Ali, Advocate

---For the Plaintiff-Appellant-Opposite Party.

Heard on: 17.01.2023 and 23.01.2023.

Judgment on: 27.02.2023.

At the instance of the present defendant-respondent-petitioners, Md. Shahabuddin being dead leaving behind his legal heirs {1(1)-1(5)} and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party to show cause as to why the impugned judgment and decree dated 26.11.2012 passed by the learned Joint District Judge, Court No. 1,

Lalmonirhat in the Other/Civil Appeal No. 60 of 2010 modifying the judgment dated 28.02.2010 passed by the learned Assistant Judge (Family Court), Kaligonj, Lalmonirhat should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party, Md. Osman Gani, as the plaintiff, filed the Other Suit No. 52 of 2008 before the learned Assistant Judge (Family Court), Kaligonj, Lalmonirhat for declaration of title and partition of the suit land described as schedules “Ka” and “Kha” in the plaint. The plaint contains that Nozai Sheikh, Fozi Sheikh and Nosimon Bibi owned the “Ka” schedule of land and Nozai Sheikh and Fozi Sheikh owned “Kha” schedule of land. After death of Nosimon Bibi 15 decimals land was divided among her 3 sons Nozai Sheikh, Nazu Sheikh and Fozi Sheikh who got equally 5 decimals of land. After the death of Nozai Sheikh, his only son Osman Gani and his wife Aziron Bewa inherited his share. After the death of Fozai Sheikh his wife Moulatan Nessa and Karjan Nessa inherited the land. At the time of the new record of rights, the plaintiff was a minor, thus, the father of the defendants wrongly recorded his name in the S. A. Khatian. Thereafter, Bacheha Bibi died unmarried, thus, her

mother sold $53\frac{1}{2}$ decimals to the plaintiff. Accordingly, the plaintiff became the owner of land measuring 3.61 acres of land in the schedules “Ka” and “Kha” and he remained in the possession. The present petitioners as the defendants contested the suit by filing a written statement contending, inter alia, that the “Ka” schedule of the land was recorded in the names of Nozai Sheikh and Nasiman Bibi. After the death of Nozai Sheikh, his property was inherited by the plaintiff and after the death of Nasiman Bibi her 3 sons, namely, Nozai Sheikh, Nazu Sheikh and Fozi Sheikh inherited the property, thereby, after the death of Fozi Sheikh leaving behind wife Moulatan Nessa and daughter Karjan Nessa alias Bachcha Bibi and a brother became in possession and the record of right was published in the names of the defendant Nos. 1-7 and they have been paying Khajna (খাজনা). Earlier, the defendants filed a suit being Partition Suit No. 50 of 2004 which was decreed in their favour and the appeal thereof was modified in their favour.

The said suit was heard by the learned Assistant Judge, Kaligonj, Lalmonirhat and after hearing both the parties the suit was decreed in part in favour of the plaintiff by the judgment and decree dated 28.02.2010. Being aggrieved the plaintiff preferred

the Title Appeal No. 60 of 2010 in the court of the learned District Judge, Lalmonirhat but subsequently it was heard by the learned Joint District Judge, Court No. 1, Lalmonirhat who reversed the judgment and decree passed by the learned trial court and modified the measurement of land by his judgment and decree dated 26.11.2012.

Being aggrieved the present petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and this Rule was issued thereupon.

This matter has been appearing in the daily cause list for a long period of time with the name of the learned Advocate for the petitioners but during the hearing of this Rule, no one appears to support the Rule.

Mr. Md. Mokshed Ali, the learned Advocate, appearing on behalf of the present plaintiff-opposite party, namely, Md. Osman Gani, submits that the learned trial court came to a wrongful conclusion as to the less-measurement of the land but the learned appellate court below rightly modified the judgment of the learned trial court by giving appropriate saham (সাহামস) as per the provisions of law.

He further submits that the plaintiff-opposite party has been in possession of the suit land by the right of inheritance acquired under the succession law but the present petitioners obtained this Rule by misleading the court, as such, the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocate for the opposite party and also considering the revisional application filed by the petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below and also perusing the needed documents available in the lower courts record, it appears to me that the present plaintiff-opposite party, namely, Md. Osman Gani filed the suit for partition and for declaration of title and for allocating saham (সাহামস) by way of succession from their predecessor. This suit was filed by impleading the present defendant-petitioners as they were required parties who were claiming saham (সাহামস) in the scheduled land described in schedules “Ka” and “Kha”. The plaintiff-opposite party claimed land measuring 3.61 acres from “Ka” and “Kha” schedules of land out of the total land described therein.

Both the parties adduced and produced their cases in the learned trial court describing their appropriate measurement of saham (সাহামস) through Nozai, Fozi and Nasiman Bibi who had earlier possessed the land and subsequently the land was succeeded by the plaintiff but due to publishing wrong record of right in the S. A. Khatian the plaintiff-opposite party was compelled to file the suit. On the other hand, the present defendant-petitioners also described the land under their possession and they have also referred to the Partition Suit No. 50 of 2004 which was decreed in their favour.

In the above circumstances, the learned trial court considered the case but given saham (সাহামস) of land measuring $2.43\frac{1}{2}$ acres of land from both the “Ka” and “Kha” schedule of land and came to a wrongful conclusion on the basis of the following findings:

...“And when Nosimon bibi died latest leaving a living son and son of a predeceased son it is provided by law that each of them would get .11 acres. In that way the present plaintiff is supposed to have obtained $1.19+.11$ acres i.e. 1.30 acres in his own capacity and the residue $.54+.11$ acres went to Noju Sheikh share as .43 remained with Mouloton Nessa who subsequently

is alleged to have sold $.53\frac{1}{2}$ acres to the plaintiff by Deed No. 5990/60. The plaintiff submitted the Deed No. 5990/60 duplicate copy which the defendant did not challenge. For this took it as proven and gave itself Ext. marked (2). In this way, it is seen on a calculation that the plaintiff is entitled to only 2.43 acres i.e. .60 acres from “Ka” scheduled land +1.30 acres from “Kha” scheduled land and $+.53\frac{1}{2}$ acres by purchase.

The plaintiff could not give any more evidence to lead me to believe that he is entitled to more than the share of $2.43\frac{1}{2}$ acres”...

However, the learned appellate court below considered the succession law for inheriting the appropriate measurement of land by way of saham (সাহাম) on the basis of the following findings:

“বিবাদীপক্ষ উপস্থাপিত দালিলিক ও মৌখিক সাক্ষ্য প্রমাণ পর্যালোচনায় তাহাদের জবাবের বক্তব্য সমর্থিত হয় নাই মর্মে দেখা যায়। কারণ, বিবাদীপক্ষের সাক্ষী ডি. ডব্লিউ-১ সাহাবুদ্দিনকে জেরা করিলে তিনি জেরা-ত ব-লন যে এস. এ. ১৮৭৯ নং খতিয়া-নর সা-বক বা সি. এস. খতিয়ান নং কত তাহা তিনি জা-নন না। অনুরূপভা-ব, সি. এস. ৮১৩ যাহার এস. এ. খতিয়ান নং ৮৩৯ উক্ত রেকর্ড বিষয়েও সয়ং বিবাদী সাহাবুদ্দিন কিছুই জা-নন না ম-র্ম জেরা-ত স্বীকার ক-রন। অনুরূপভা-ব, ডি. ডব্লিউ-৩ জেরা-ত ব-লন যে নজু শে-খর ওয়ারিশ ছাড়া তাহারা নালিশী জো-ত আর কোন অংশ খরিদ করেন নাই। নথি হইতে দেখা যায় নজু শেখ মাত্র ৫ শতক

জমি মা-য়র নিকট হই-ত প্রাপ্ত হইয়া-ছন। ফ-ল নালিশী উভয় খতিয়া-ন মোট ৩.৬৬ একর হইতে উক্ত .০৫ একর বাদ দি-ল অবশিষ্ট ৩.৬১ একর জমি থা-ক যাহা বাদীর দাবীর সহিত সামঞ্জস্যপূর্ণ। কা-জই বিবাদী-দর না-ম ১৮৭৯ ও ৮৩৯ নং এস. এ. খতিয়ান ভুলক্রমে হইয়াছে ইহা নির্দিধায় বলা যায়।”...

In view of the above discussions, I am of the opinion that the learned appellate court below committed no error of law by modifying the judgment of the learned trial court and by providing the appropriate saham (সাহামস) measuring 3.61 acres of land from the schedules “Ka” and “Kha” described in the plaint.

In view of the above, I consider that this court does not require any further consideration. As such, I am not inclined to interfere upon the judgment and decree passed by the learned appellate court below.

Accordingly, I do not find any merit in the Rule.

In the result, the Rule is hereby discharged.

The judgment and decree dated 26.11.2012 passed by the learned Joint District Judge, Court No. 1, Lalmonirhat in the Other/Civil Appeal No. 60 of 20110 allowing the appeal and thereby modifying the judgment of the learned Assistant Judge, Family Court, Kaligonj, Lalmonirhat passed on 28.02.2010 in the

Other Suit No. 52 of 2008 decreeing the suit in part is hereby upheld.

The interim order of direction passed at the time of issuance of the Rule to maintain *status quo* by the parties in respect of the possession and position is hereby recalled.

The concerned section of this court is hereby directed to send down the lower courts' record along with a copy of this judgment and order to the learned courts below immediately.